

Presenting Expert Testimony at Trial: A Judge's View

The Expert Witness

An expert is a person with special knowledge, skill, experience or training relating to a subject not within the range of ordinary training or experience.

CACI 219

You do not have to accept an expert's opinion. As with any other witness it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony.

CACI 3515

You must decide the value of property based solely on the testimony of the witnesses who have given their opinion of fair market value. You may consider other evidence only to help you understand and weigh the testimony of those witnesses.

You may find the same fair market value testified to by a witness, or you may find a value anywhere between the highest and lowest values stated by the witnesses.

- Do not have to accept expert opinion

Escondido Union School Dist. v. Casa Suenos De Oro (2005)
129 CA4th 944

- Do not have to pick value between highest and lowest

People ex rel. Dept. of Public Works v. Jarvis (1969) 274 CA2d 217. But see, Aetna Life & Casualty Co. v. City of Los Angeles (1985) 170 CA3d 865

CACI 221

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the witnesses' qualifications.

Jurors and Experts

- What they say
 - Not overly impressed
 - Hired guns
- What they do
 - Evaluate content of testimony
 - Evaluate expert's credibility
 - Expertise
 - Trustworthiness

Expertise vs. Trustworthiness

- Trust wins
- Unless testimony is complex, then expertise wins
- Unless
 - Expert's a hired gun
 - Testimony isn't clear

CACI 5003

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

CACI 5003

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(c) How did the witness look, act, and speak while testifying?



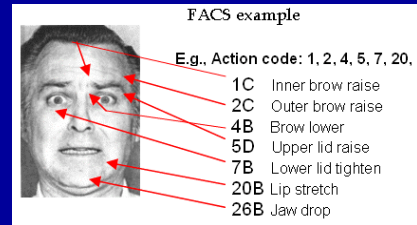
Signs of Deception

- Gaze aversion
- Speech hesitation
- Eye blinking
- Less smiling
- Fidgeting and more arm/leg movement
- Hand-touching
- Unnatural or excessive gestures

Ekman



Facial Action Coding System

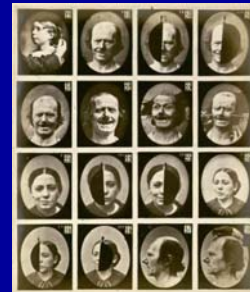


The Mechanism of Human Facial Expression

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Nonverbal Influences

- Kinesics - Body language
- Paralinguistics - The sound of the communication
- Proxemics - The spatial relationship between the speaker and others
- Immediacy - Behavior that enhances feelings of closeness

Immediacy

- Facial pleasantness
- Illustrative gestures
- Increased eye contact
- Faster speech
- Louder speech
- Forward lean

Verbal Influences

- Hypercorrect speech
- Narrative vs. fragmented speech
- Simultaneous speech
- Powerless vs. powerful speech

Powerless Speech

- Hedges
 - Prefatory remarks (“I think,” “I guess”)
 - Appended remarks (“you know”)
 - Modifiers (“kinda,” “sorta”)
- Intensifiers (“very,” “definitely”)
- Hesitation forms (“uh,” “um,” “well”)
- Polite forms (“sir,” “please”)
- Question intonation

Decision-making Processes

Intuition	Deduction
<ul style="list-style-type: none">• Spontaneous• Effortless• Fast	<ul style="list-style-type: none">• Deliberate• Effortful• Slow

Availability and Vividness

- Availability: Judgment based on what comes to mind
- Vividness
 - How concrete or imaginable
 - How interesting or exciting
 - How close in space or time

DUI Study

- Defendant ran stop sign on way home from Christmas party and hit a garbage truck.
- No blood alcohol test
- Written description of D’s character
- 9 written arguments from each side
- One-half “vivid,” other “bland”

Prosecution Argument

Bland

On his way out the door, Sanders staggered against a serving table, knocking a bowl to the floor.

Vivid

On his way out the door, Sanders staggered against a serving table, knocking a bowl of guacamole dip to the floor and splattering guacamole on the white shag carpet.

Defense Argument

Bland

The owner of the garbage truck admitted under cross-examination that his garbage truck is difficult to see at night because it is grey in color

Vivid

The owner said his trucks are grey "because it hides the dirt," and he said "What do you want, I should paint them pink?"

Results

- Vividness had no effect on Day One
- Vividness had substantial effect 48 hours later
 - Subjects who read vivid prosecution arguments more likely to find D guilty

Learning Styles

- Auditory
- Visual
- Tactile

Do

- Keep it short
- Speak loudly
- Maintain eye contact
- Display facial pleasantness
- Use illustrative gestures
- Use a narrative style

Don't

- Fidget
- Stroke your hands
- Use unnatural or excessive gestures
- Speak too slowly
- Interrupt the attorney
- Use powerless speech (hedges, intensifiers, hesitation forms, polite forms, question intonation)